

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
TON SERVICES INC.)
For a Certificate of Authority)
As a Telecommunications Reseller)
Within the State of Hawaii.)
_____)

DOCKET NO. 04-0171

DECISION AND ORDER NO. 21445

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

RECEIVED

2004 NOV -8 A 8:32

Filed Nov. 4, 2004
At 2 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

In the Matter of the Application of)
TON SERVICES INC.)
For a Certificate of Authority)
As a Telecommunications Reseller)
Within the State of Hawaii.)

DECISION AND ORDER

I.

Introduction

TON SERVICES, INC. ("Applicant") requests a certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii (the "State") as a reseller.¹ Applicant makes its request pursuant to Hawaii Revised Statutes ("HRS") § 269-7.5 and Hawaii Administrative Rules ("HAR") § 6-61-74.

Applicant served a copy of its Application on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). On July 29, 2004, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to approval of the Application, subject to certain qualifications.²

¹Applicant's application, filed on July 9, 2004 ("Application").

²The Consumer Advocate raises various concerns and recommendations in its Statement of Position relating to

On July 30, 2004, the commission issued information requests ("IRs") to Applicant. Applicant responded to the commission's IRs on September 1, 2004.

On October 6, 2004, the commission issued Protective Order No. 21397.

II.

Description of Applicant and its Proposed Services

Applicant is a Utah corporation authorized to do business in the State as a foreign corporation. Its principal place of business is Odgen, Utah.

Applicant intends to provide intrastate telecommunications services within the State as a reseller. Specifically, it intends to provide prepaid calling card services twenty-four (24) hours per day, seven (7) days a week for residential and business customers in Hawaii.

III.

Discussion

A.

COA

Upon review of the Application³, the commission makes the following findings pursuant to HAR § 6-80-18(a):

Applicant's proposed tariff, which is discussed in more detail in Section III., below.

³On October 21, 2004, Applicant submitted updated financial statements in response to the Consumer Advocate's July 29, 2004 recommendation and the commission's September 9, 2004 and

1. Applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the proposed services;

2. Applicant is fit, willing, and able to properly perform the telecommunications services and to conform to the terms, conditions, and rules prescribed or adopted by the commission;⁴ and

3. Applicant's proposed telecommunications services are in the public interest.

Accordingly, the commission concludes that Applicant should be granted a COA to provide intrastate telecommunications services as a reseller.

October 13, 2004 directive. Thus, Applicant appears to have satisfactorily met the requirements of HAR § 6-80-17(c)(1)(E).

⁴On January 14, 2003, Applicant's COA was revoked for its failure to file an annual financial report for the year 2000, pursuant to HAR § 6-80-91, and pay a public utility fee that was due on July 31, 2001, pursuant to HRS § 269-30. Decision and Order No. 19961, filed on January 14, 2003, in Docket No. 02-0331. Notwithstanding Applicant's violations as set forth in Decision and Order No. 19961, the commission finds that upon review of the entire record, particularly Applicant's responses to the commission's IRs, Applicant is fit, willing, and able to properly perform the telecommunications services and to conform to the terms, conditions, and rules prescribed or adopted by the commission. See, *In re Latitudes & Adatudes Adventure Tours, LLC*, Docket No. 99-0081, Decision and Order No. 18665, (July 2, 2001) (holding that past violations, if any, do not necessarily preclude the commission from finding that an applicant for a certificate of public convenience and necessity is fit, willing, and able to conform to the motor carrier statutes and the commission's rules and regulations).

B.

Proposed Tariff

In its Statement of Position, the Consumer Advocate provides four (4) recommended revisions to Applicant's proposed tariff. Based on the commission's review of the Consumer Advocate's recommended revisions, we find recommended revisions nos. 1, 2, 3 and 4(in part)⁵ to the proposed tariff to be reasonable and necessary. Thus, we conclude that Applicant's proposed tariff should be revised as follows:

1. The reference to HAR § 6-80-106(c) in Section 2.4.2. (Original Page 10) should be deleted.

⁵HAR § 6-82-11(a) provides the following:

A telecommunications carrier granted a CPCN, COA, or COR authorizing the provision of telecommunications service in the State need not apply for an additional COA or COR in order to offer or provide intrastate pay telephone service. Any such telecommunications carrier, however, before adding or expanding the nature or scope of its telecommunications services beyond that authorized in its existing CPCN, COA, or COR, to include intrastate pay telephone service, shall file a separate tariff for its new service, unless ordered otherwise by the commission.

In light of the above provision, we disagree with the Consumer Advocate's recommendation that Applicant should "request [c]ommission authorization" if it seeks to provide payphone service in Hawaii. Moreover, based on Applicant's letter dated October 22, 2004 and filed on October 25, 2004, it does not appear that Applicant intends to provide pay telephone services, as defined in HAR chapter 6-82. However, consistent with HAR § 6-82-11(a) and as discussed further below, we will require Applicant to file a separate tariff for intrastate pay telephone service in accordance with HAR chapter 6-82 if it seeks to also provide intrastate pay telephone service in Hawaii.

2. Section 2.18. (Original Page 17) should be amended to read, in relevant part, as follows: "A return check charge of \$25.00 will be assessed for checks returned for insufficient funds."
3. Section 3.9 (Original Page 26) should be corrected to be consistent with the representations made in Section 10 (Page No. 3) of the Application (i.e., reminder messages for card usage balances).
4. If Applicant seeks to provide pay intrastate telephone services in the State, all references to "Payphone Compensation Charge" in Applicant's proposed tariff should be deleted and Applicant should file a separate tariff for intrastate pay telephone service in accordance with HAR chapter 6-82.

IV.

Orders

THE COMMISSION ORDERS:

1. Applicant is granted a COA to provide intrastate telecommunications services in the State as a reseller.
2. As the holder of a COA, Applicant shall be subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80, 6-81 and 6-82; any other applicable State laws and commission rules; and any orders that the commission may issue from time to time.

3. Applicant shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Applicant's tariffs shall comply with the provisions of HAR chapter 6-80. If Applicant seeks to offer or provide intrastate pay telephone services in the State, Applicant shall file a separate tariff for intrastate pay telephone service in accordance with HAR chapters 6-80 and 6-82. In the event of a conflict between any tariff provision and State law, State law shall prevail.

4. Applicant shall conform its initial tariff to the applicable provisions of HAR chapter 6-80 by, among other things, incorporating the tariff revisions set forth in Section III. of this decision and order. An original and eight (8) copies of the initial tariff shall be filed with the commission, and two (2) additional copies shall be served on the Consumer Advocate. Applicant shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

5. Within thirty (30) days from the date of this decision and order, Applicant shall pay a public utility fee of \$60, pursuant to HRS § 269-30. The business check shall be made payable to the Hawaii Public Utilities Commission, and sent to the commission's office at 465 S. King Street #103, Honolulu, HI, 96813.

6. Within thirty (30) days from the date of this decision and order, Applicant shall also pay a telecommunications relay service ("TRS") contribution of \$10.00, established pursuant to: (A) Act 50, adopted on May 7, 2003 (codified at HRS § 269-16.6); and (B) Order No. 21049, filed on June 10, 2004, in

Docket No. 04-0070. (A copy of Order No. 21049 is attached hereto as Exhibit 1.) The business check shall be made payable to "Hawaii TRS", and sent to the Hawaii TRS Administrator, NECA Services, Inc., 80 S. Jefferson Road, Whippany, NJ 07981. Written proof of payment shall be sent to the commission.

7. Failure to promptly comply with the requirements set forth in paragraphs 3 to 6 may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii NOV - 4 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Kris N. Nakagawa
Kris N. Nakagawa
Commission Counsel
04-0171.cc

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting an Investigation)
into the Carrier Contribution)
Factor and Telecommunications)
Relay Services Fund Size for)
the period of July 1, 2004)
through June 30, 2005.)
_____)

DOCKET NO. 04-0070

ORDER NO. 21049

Filed June 10, 2004

At 2:01 o'clock P.M.

Bruce Kane
for Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
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Instituting an Investigation)
into the Carrier Contribution)
Factor and Telecommunications)
Relay Services Fund Size for)
the period of July 1, 2004)
through June 30, 2005.)
_____)

Docket No. 04-0070

Decision and Order No. 21049

DECISION AND ORDER

I.

Background

By Order No. 20904, filed on April 15, 2004, the commission initiated the instant proceeding to examine whether to modify the Telecommunications Relay Services ("TRS") carrier contribution factor and fund size for the period July 1, 2004 to June 30, 2005, established in accordance with Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058 ("Order No. 20193").¹ Specifically, the commission proposes to modify the carrier contribution factor from 0.00375 to 0.0010 effective on July 1, 2004 ("Proposed Carrier Contribution Factor"). The proposed carrier contribution factor of 0.0010 is expected to remain in effect through June 30, 2005.

¹In Docket No. 03-0058, the commission selected SPRINT COMMUNICATIONS CO., LP. ("Sprint") as the exclusive provider of intrastate TRS within the State of Hawaii ("State of Hawaii") from July 1, 2003 to June 30, 2006. See Decision and Order No. 20163, filed on April 30 2003. Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058.

The commission also proposes to keep the projected TRS fund size, as of July 1, 2004, at \$680,000 ("Proposed TRS Fund Size").

The commission served copies of Order No. 20904 on The Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate") and Sprint, the parties to this proceeding, and mailed copies of Order No. 20904 to all chartered, certificated and registered telecommunications carriers, except payphone providers, at their mailing addresses on file with the commission. Written comments to the proposals were accepted until May 14, 2004. As of the date of this order, only the Consumer Advocate filed written comments on the commission's proposals.²

II.

Background

On May 23, 2003, the commission issued Order No. 20193, in Docket No. 03-0058 which, among other things, ordered: (1) every telecommunications carrier providing intrastate telecommunications service in the State of Hawaii to contract with Sprint for the provision of telecommunications relay service, for the period beginning July 1, 2003 to June 30, 2006; (2) every carrier providing intrastate telecommunications service in Hawaii shall contribute to the TRS fund on the basis of gross operating revenues from the retail provision of intrastate telecommunications services during the preceding calendar year,

²Consumer Advocate's Statement of Position, filed on May 7, 2004.

consistent with the terms of Order No. 20193³; (3) contributors' contribution to the TRS fund shall be the product of their gross operating revenue from the retail provision of intrastate telecommunications services during the preceding calendar year, which is subject to investigation by the commission, and a contribution factor determined annually by the commission, consistent with the terms of Order No. 20193; and (4) the annual TRS funding period commences July 1 and ends June 30 of each year.

III.

Discussion

A.

Consumer Advocate's Statement of Position

The Consumer Advocate states that it has no objections to the Commission's proposed carrier contribution factor and the fund size. However, in order to monitor the sufficiency of the fund size and protect against degradation of service, the Consumer Advocate recommends that Sprint should be required to provide TRS reports on a quarterly basis so that the commission may be better and more quickly able to determine whether changes to the contribution factor are warranted. Specifically, the Consumer Advocate recommends that the reports contain: (1) actual number of TRS calls offered by month; (2) actual number of abandoned calls by month; (3) average speed of answer

³The commission specifically excluded payphone providers from contributing to the TRS fund.

in seconds of TRS calls by month; (4) average work time in seconds by month; (5) number of TRS complaints filed either verbally or in writing by month; and (6) detailed data on actual revenues, expenses and investments for TRS services in Hawaii.

B.

Reporting Requirements

Upon review, the commission declines to adopt the Consumer Advocate's recommendation relating to additional reporting requirements primarily because we find these requirements are unnecessary and redundant.

Pursuant to the terms and conditions of the Request for Service ("RFS") in Docket No. 03-0058, which governs the commission's arrangement with Sprint for the provisioning of TRS, Sprint is required to submit the following reports:

- a. Section 4.5 (Payment): "No more than fifteen days after the close of each month, the service provider will submit a report [i.e., billing statement] to the Commission detailing the previous month's work. Then, the Commission, within thirty (30) days of receipt of said report, will authorize or determine a date the provider is authorized to withdraw payment from the TRS account or fund. Total reimbursement shall not exceed the total fixed bid per minute price."
- b. Section 4.13 (Reports): "[A] monthly report with the monthly billing statement which will enable the Commission to monitor whether the Relay service is meeting each of the FCC and State performance standards. The report shall also include summary information on complaints, when appropriate. When applicable, the monthly report should include information on any hardware procedural or service enhancements made to the Relay service. After receiving authorization from the Commission, the selected service provider may request designation of certain written reports as proprietary, consistent with the Commission's practice and procedures."

In compliance with Section 4.5 of the RFS, NECA Services, Inc. ("NECA") files on a monthly basis: (1) a Statement of Fund Performance; and (2) a Delinquent Report. The information includes total fund revenues collected from telecommunications carriers, disbursements to Sprint as authorized by the commission, fund balance as of the end of the previous month, and delinquent carriers that have not paid their TRS fund contributions.

Furthermore, in compliance with Section 4.13 of the RFS, Sprint provides comprehensive, detailed information on minutes of use; traffic reporting statistics, including number of calls offered and abandoned, average speed of answer, and average work time; speech-to-speech statistics; and CapTel results. The billing statement also includes summary reporting of customer complaints and outreach efforts.

The commission notes that the Consumer Advocate has not been copied on any of these reports previously filed with the commission and we hereinafter will require Sprint to copy the Consumer Advocate on these reports going forward. Sprint's existing reports contain much of the information the Consumer Advocate appears to be seeking. The only type of information not included in Sprint's reports is specific investment information, however, we do not believe that that information needs to be included in the compliance reports.⁴

⁴As Sprint has already been doing, it should continue to keep the commission informed, and seek our approval as appropriate, on new investments it plans to make to its network or operations that are expected to impact TRS in Hawaii. Sprint should also keep the Consumer Advocate informed of these new investments.

C.

Carrier Contribution Factor and Fund Size

Upon further review, the commission finds it reasonable to adopt the commission's proposals to modify the existing carrier contribution factor and fund size in their entirety as stated in Order No. 20904. In particular, the carrier contribution factor for the period July 1, 2004 to June 30, 2005 is 0.0010 and the projected TRS fund size as of July 1, 2004 will be established at \$680,000.

III.

Orders

THE COMMISSION ORDERS:

1. The commission's proposed modifications to the existing contribution factors and fund size, as stated in Order No. 20904, is adopted in their entirety.
2. The contribution factor for the period July 1, 2004 to June 30, 2005 is 0.0010. The projected TRS fund size as of July 1, 2004 is \$680,000.
3. Each carrier shall complete and submit a TRS Reporting Worksheet, attached to this Order as Exhibit "A".
4. Annual contributions are due July 26th; carriers who owe contributions \$1,200 or more may pay in twelve equal monthly installments, due on the 26th of each month, provided that they submit their TRS Reporting Worksheet by July 26th.

5. For carriers reporting \$10,000 or less in gross intrastate retail revenues, they shall contribute at least \$10.00 for the period July 1, 2004 to June 30, 2005.


6. Every carrier, except Commercial Mobile Radio Service ("CMRS") providers, shall comply with the 30-day notice requirement of HRS § 269-16(b) and HAR § 6-80-40(b) for any TRS surcharge imposed on its customers, both residential and business, to recover the amount of its contribution. CMRS providers shall place information on their TRS surcharges on their websites, consistent with Decision and Order No. 20890, filed on April 7, 2004, in Docket No. 02-0186.

7. Sprint shall copy the Consumer Advocate on the following reports to the commission: (1) Statement of Fund Performance; (2) Delinquent Report; and (3) TRS Performance Information and Statistics.

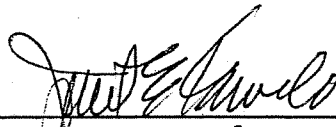
8. Order No. 20193, filed on May 23, 2003, in Docket No. 03-0058, is amended consistent with the terms and conditions of this decision and order. In all other respects, Order No. 20193 remains unchanged.

DONE at Honolulu, Hawaii this 10th day of June, 2004.

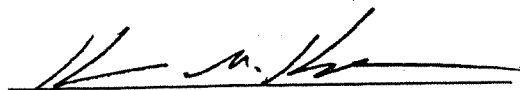
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kevin M. Katsura
Commission Counsel

04-0070.eh

State of Hawaii
Public Utilities Commission
Telecommunications Relay Services
Carrier Remittance Worksheet
For the Period July 1, 20__ - June 30, 20__

SECTION A		CARRIER IDENTIFICATION
Date:		
Company Name:		
Mailing Address:		
Email Address:		

SECTION B		REMITTANCE CALCULATION
1. Gross Revenues (Prior Calendar Year) <small>(e.g., Current year is 2004; Report revenues from 2003) (Amount should match gross revenues reported for Hawaii PUC Fee purposes, HRS § 269-30)</small>		
2. Less: Revenue Adjustments (describe, see Section E)	< _____ >	
3. Gross Intrastate Retail Revenues		
4. Hawaii TRS Contribution Factor	.001	
5. Gross Hawaii TRS Assessment (line 3 x line 4)		
6. Greater of line 5 or \$10.00 (minimum due)		
<p>If Line 6 is less than \$1,200, this is your annual contribution to the TRS Fund for the period beginning July 1st of the current year to June 30th of the following year. Please pay the amount on line 6, in full, by July 26th of the current year. Send your remittance with a copy of this worksheet to the address listed below.</p> <p>If Line 6 is \$1,200 or more, continue to line 7 below.</p>		

SECTION C		MONTHLY CONTRIBUTION
7. Divide line 6 by 12		
<p>Line 7 is your first monthly contribution to the TRS Fund, for the period beginning July 1st of the current year to June 30th of the following year. Send your 1st monthly remittance with a copy of this worksheet to the address listed below. Please pay the amount on line 7 by July 26th. NECA Services, Inc. will then send you a bill for the remaining eleven monthly payments.</p>		

SECTION D		CERTIFICATION	
<p>Under penalties as provided by law, I certify that I am duly authorized to verify the foregoing information contained herein and that the information is true and correct to the best of my knowledge and belief.</p>			
Date	Officer Name	Officer Signature	Officer Title
Date	Contact Name	Contact Phone	Contact Title

<p style="text-align: center;">Questions???</p> <p>Hawaii TRS Administrator NECA Services, Inc. 80 S. Jefferson Road Whippany, NJ 07981 Phone (973) 884-8011 Fax (973) 599-6504</p>	<p style="text-align: center;">Make checks payable to "Hawaii TRS" and send with worksheet to: Attn: Hawaii TRS Administrator NECA Services, Inc. 80 S. Jefferson Road Whippany, NJ 07981</p>
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SECTION E DETAILS CONCERNING REVENUE ADJUSTMENT(S)

If revenue adjustment(s) are not explained here, amounts deducted will be disallowed and proposed assessments may be prepared against you.

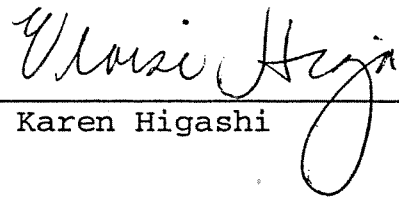
Describe amounts deducted from Gross Revenues to obtain Gross Intrastate Retail Revenues (list):	Amount
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	
TOTAL	

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21049 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

MAGGIE SCHOOLAR
GOVERNMENT ACCOUNT EXECUTIVE
SPRINT COMMUNICATIONS
1321 Rutherford Lane, Suite 120
Austin, TX 78753



for Karen Higashi

DATED: June 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21445 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

ROBIN NORTON, CONSULTANT
TECHNOLOGIES MANAGEMENT, INC.
210 N. Park Avenue
Winter Park, FL 32789

Consultant to TON SERVICES, INC.



Karen Higashi

DATED: NOV - 4 2004